



## **About California's Paid Family Leave Law**

### **OVERVIEW**

- Up to 6 weeks of leave a year.
- For parental leave to care for a new born or a newly adopted or foster care placed child who is unable to care for themselves.
- For leave to care for a seriously ill family member. "Family member includes parent, spouse, domestic partner, or child).
- Applies to employees already covered by existing State Disability Insurance (SDI) system, meaning all California employees EXCEPT certain categories of public employees.
- 100% employee funded.
- The program is fully employee funded and employees will pay an average of \$27 per year (A minimum wage earner would pay \$11.23 a year.)
- The benefit level – 55-60% wage replacement, up to \$728 per week in 2004. Maximum benefits are indexed to the state's average weekly wage.
- 1-week waiting period.
- Employer may require an employee to use up to 2 weeks of earned, but unused vacation leave before tapping into fund.
- Builds on existing SDI system.
- Creates no new employment rights. Under current law which is not altered by this legislation, employers of less than 50 are not required to hold a job for an employee who goes on Family Temporary Disability Leave unless they employ 5 or more and the employee's leave is protected by California's Pregnancy Disability Leave law.
- Pay into program begins in January 2004.
- Access to benefits begins in July 2004.

### **THE LAW IN DEPTH**

SB 1661 creates the **family temporary disability insurance (FTDI)** program.

#### **Key Dates**

- The law becomes operative on January 1, 2004.
- Benefits shall be payable beginning on July 1, 2004.

### **Administration**

- Family temporary disability insurance (FTDI) is a component of the state disability insurance program (SDI). (SDI is also known as the state's unemployment compensation disability insurance program; it provides wage replacement benefits for non-occupational illness, injury or pregnancy leave. (See separate one-pager on California's existing temporary disability insurance program).
- The administering agency of SDI, and therefore FTDI, is the Employment Development Department (EDD)
- The FTDI program shall be administered in accordance with the policies of the state disability insurance program (SDI)
- Both initial and ongoing administrative costs resulting from the FTDI program shall be payable from the Disability Fund itself (not from general funds).

### **Worker Contributions**

- EDD's director (hereafter, Director) sets an annual worker contribution rate on earnings up to the taxable wage ceiling, which will be \$68,829 in 2004.
- The Director shall increase the rate of worker contributions by 0.08 percent for the 2004 and 2005 calendar years to cover the initial cost of the new family leave benefits.
- The rate of worker contributions for the entire SDI program (including the FTDI program) shall not exceed 1.5 percent or be less than 0.1 percent.
- The rate of worker contributions for 2004 is estimated to be .98%.

### **Outreach & Education**

Beginning January 1, 2004, the Director shall

- Provide to each employer a notice informing workers of their rights and benefits.
- This notice shall be given by every employer to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, due to pregnancy, nonoccupational sickness or injury, or the need to provide care for any sick or injured family member or new child who is unable to care for himself or herself.

### **Claim Filing, Certification & Related Issues**

- A claimant shall file a claim for disability benefits with EDD.
- The claim shall be supported by a certificate of a treating physician or practitioner that establishes
  - The sickness, injury or pregnancy of the employee, or
  - The condition of the family member that warrants the care of the employee.
- The certificate shall contain:
  - A diagnosis and diagnostic code
  - The date, if known, when the condition began
  - An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the family member

- A statement that the serious health condition “warrants the participation of the employee” to provide care for his or her family member.
- “Warrants the participation of the employee” includes, but is not limited to:
  - > providing psychological comfort to the family member,
  - > arranging “third party” care for the family member,
  - > directly providing, or participating in, the medical care of the family member.
- EDD may request additional medical evidence to supplement the claim, if this evidence can be procured without additional cost to the claimant. Additional evidence may include:
  - > Identification of diagnoses, symptoms, or a statement as to the facts of the claimant’s disability
    - by the physician or practitioner treating the claimant **OR**
    - by the examining physician or other representative of EDD.
- EDD shall develop a certification form for an employee for parental leave (meaning leave due to the birth of a child of the employee or the employee’s domestic partner, or the placement of a child who is unable to care for himself or herself with the employee in connection with the adoption or foster care of the child by the employee or domestic partner).
- If the Director finds that any individual falsely certifies the medical condition of any person with the intent to defraud, the Director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification.

### **Voluntary Plans**

An employer may establish a voluntary plan for his or her employees, as long as:

- The rights provided to the covered employees are greater than those provided by the state plan.
- ....[Various other details.]

### **Required Use of Accrued Vacation Leave**

- An employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee’s initial receipt of FTDI benefits.
- If an employer requires an employee to use vacation leave, that portion of vacation leave that does not exceed one week shall be applied to the required 7-day waiting period.

### **Other**

- Leave for bonding with a new child (i.e., parental leave) is restricted to the first year after the child’s birth or placement of the child.
- No benefits are payable during a 7-day waiting period.
- An individual is not eligible for family temporary disability insurance benefits with respect to any day that another family member is “able and available” for the same

period of time that the individual is providing the required care. (“Able and available” is not defined in the bill.)

- An individual who is entitled to leave under the FMLA and the California Family Rights Act (CFRA) must take Family Temporary Disability Insurance (FTDI) leave concurrent with leave taken under the FMLA and the CFRA.

### **Definitions**

<b>Term</b>	<b>Definition</b>
Family member	Child, parent, spouse, domestic partner.
Child**	Biological, step, adopted, foster child of an employee who stands in loco parentis to that child.
Parent	Biological, step, adoptive, or foster parent, legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.
Domestic Partner	as defined in Section 297 of the Family Code.
Serious Health Condition	An illness, injury, impairment, or physical or <i>mental</i> condition that involves <ul style="list-style-type: none"> <li>▪ inpatient care in a hospital, hospice or residential health care facility, or</li> <li>▪ continuing treatment by a health care provider, or</li> <li>▪ continuing supervision by a health care provider.</li> </ul>

\*\* Leave for bonding with a new child (i.e., parental leave) is restricted to the first year after the child’s birth or placement of the child.

### **Key to Acronyms**

<b>Acronym</b>	<b>Definition</b>
FTDI	Family temporary disability insurance program, a component of SDI.
SDI	State disability insurance program (also known as: unemployment compensation disability insurance program, or temporary disability insurance)
CFRA	California Family Rights Act, identical to the federal Family and Medical Leave Act (FMLA)
FMLA	The federal Family and Medical Leave Act.
EDD	California Employment Development Department, the agency administering SDI and, therefore, FTDI